

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:06 CR 24

UNITED STATES OF AMERICA,	)
Plaintiff,	)
	)
vs.	)
	)
	)
JOSIAH CHARLES MCMANUS,	)
Defendant,	)
and	)
	)
BANK OF AMERICA,	)
Garnishee.	)

**ORDER**

This matter is before the Court on the Government's Motion for Order of Continuing Garnishment (Doc. 83).

On November 1, 2006, Defendant was sentenced for his conviction of speeding to elude arrest. As a term of the resulting Judgment, Defendant was ordered to pay an assessment of \$100.00 and restitution of \$9,043.84 to the victims of the crime. Doc. 32. The balance of this debt as of November 8, 2019 was \$1,417.67. Doc. 83, p. 1.

On November 12, 2019, the Court entered a Writ of Continuing Garnishment (the "Writ"). Doc. 78.

On November 13, 2019, the Government mailed the garnishment package (consisting of the Writ and instructions to Defendant informing him

of his right to seek a hearing or claim certain exemptions, see Doc. 77) to Defendant and the Garnishee by certified mail. The Government explains that although the garnishment package was sent to Defendant by certified mail to his last known address, Defendant was unavailable at the time of delivery and thereafter failed to pick up the package. Doc. 83, p. 2.

On December 9, 2019, the Garnishee filed its Answer, which indicates that the Garnishee has in its custody, control, or possession property or funds owed by or owing to Defendant, in particular, \$235 in non-earnings held in a checking account. Doc. 80. The Garnishee certified that it served its Answer on Defendant by first-class mail at Defendant's last known address. Id.

On February 19, 2020, the Government served the garnishment package on Defendant by Federal Express, and the garnishment package was delivered to Defendant on February 20, 2020. Doc. 83-2.

On August 4, 2020, the United States served another copy of the Garnishee's Answer on Defendant by Federal Express to Defendant's last known address. The Answer was delivered on August 5, 2020. Doc. 83-3.<sup>1</sup>

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<sup>1</sup> The United States explains that "[t]here is no doubt" that this is Defendant's correct address because the address was obtained through Defendant's credit report in November 2018, was confirmed by Defendant's rental management company in December 2018, and because "[s]ince then, the Financial Litigation Unit has had many communications with the Defendant, including by letter addressed to" that address. Doc. 83, pp. 5-6.

Pursuant to federal debt collection procedures, a judgment debtor or the United States may file a written objection to the answer of a garnishee and request a hearing. Such filings are due “within 20 days after receipt of the answer.” 28 U.S.C. § 3205(c)(5). Defendant was advised of this deadline. Doc. 77, p. 1 (“If you want a hearing, within twenty (20) days after receipt of the Answer of Garnishee, you may file a written objection to the Answer and request a hearing”).

Defendant has not requested a hearing with regard to the potential garnishment of the subject funds, and the statutory time period to do so has expired. 28 U.S.C. § 3205(c)(5); 28 U.S.C. § 3205(c)(7).

The Government now seeks an order of continuing garnishment directing the Garnishee to pay the balance of the funds it is holding to the United States.

**IT IS THEREFORE ORDERED THAT:**

1. The Government’s Motion for Order of Continuing Garnishment (Doc. 83) is **GRANTED**; and
2. An Order of Continuing Garnishment is **ENTERED** in the amount of \$1,417.67 as computed through November 8, 2019. The Garnishee is directed to pay the balance held in the account in the approximate amount of \$235.00, plus any accrued

interest or other deposits made to the account to the United States.

Signed: October 22, 2020

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf  
United States Magistrate Judge

